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INTERNATIONAL ARMS TRANSFERS, WITH PARTICULAR REFERENCE TO RESOLUTION 46/36 H OF 6 DECEMBER 1991

Letter dated 21 March 1994 from the Permanent Representative of Colombia to the United Nations addressed to the Secretary of the Disarmament Commission

I am transmitting herewith a working paper prepared by the Colombian delegation as a contribution to the Working Group on the question of International Arms Transfers, which will meet from 18 April 1994, for circulation as a document of the Disarmament Commission.

(Signed) Luis FERNANDO JARAMILLO
Ambassador
Permanent Representative

Annex

GUIDELINES FOR THE CONTROL OF INTERNATIONAL ARMS TRANSFERS AIMED AT ERADICATING THE ILLICIT ARMS TRADE

Working paper submitted by Colombia

I. INTRODUCTION

1. The illicit arms trade is often held responsible for endangering peace and security, supplying instruments of war for the purpose of destabilizing legitimately constituted governments; fomenting violence and criminal activities; and promoting terrorism, drug trafficking, common crime, mercenary activities and violations of human rights.

2. The impact of the illicit arms trade on the peace and security of many nations has been a matter of concern for the international community. Fundamental issues involving the tranquillity and welfare of peoples and the potential for attaining peace are at stake.

II. DEFINITION

3. For the purposes of the work of the Disarmament Commission, the following definition of "illicit arms trade" provided in chapter VIII of the report of the Secretary-General is to be used:

> "... the illicit arms trade is understood to cover that international trade in conventional arms which is contrary to the laws of States and/or international law ... Under international law, arms trade can be circumscribed, inter alia, by the prohibition of interference in the internal affairs of a State, by international treaties, or by binding decisions adopted by the Security Council under Chapter VII of the Charter of the United Nations."

Similarly, for the purposes of the Commission's work, the term "illicit arms trade" is identified with the so-called "black market", defined as that which evades the control of national or international authorities.

4. Since national legislation varies from country to country, in practice the borderline between licit and illicit arms transfers may not always be apparent. Similarly, the legal norms relating to arms transfers may be vague or circumscribed by policies which vary from country to country.

III. FACTORS WHICH AFFECT THE ILLICIT ARMS TRADE

5. With regard to the phenomenon of the illicit arms trade, we know more about its adverse consequences than about the ever-changing ways in which it operates. We can, however, indicate some of the factors which affect the illicit arms trade with a view to the formulation of recommendations for its eradication:

(a) The absence of national legislation and controls aimed at countering the illicit arms trade favours a market in which potential belligerents or non-State actors have access to a variety of types of weapons, including the most technologically advanced;

(b) Legal, political and technical differences in internal controls of arms transfers contribute to the growing clandestine market. The possibility of procuring weapons in one country freely or with few legal and administrative restrictions and subsequently importing them clandestinely into another country where their sale is prohibited or controlled is the first step toward the emergence of a typical illicit arms market;

(c) The high profit margin which can be achieved because of the ease with which weapons can be bought cheaply on the domestic market and later sold at a high price on the international black market is the chief element that attracts a large number of arms traffickers, especially when there is a considerable supply of the merchandise in question at the source and a significant demand at its destination;

(d) The illicit arms trade makes available a supply of a variety of categories of weapons designed for the exclusive use of the military forces to which the ordinary citizen would have no legal access;

(e) The illicit arms trade permits the acquisition of arms by individuals who do not meet the legal requirements to purchase or carry them, and by individuals who are outside the law;

(f) Quite apart from their illegality, clandestine, secret, or covert arms transfers arouse suspicions and breed distrust and consequently have an adverse effect on peace and security;

(g) The illicit arms market leads to the proliferation of weapons, in that it forces States to purchase arms to counter its effects.

6. Accordingly, the harmonization of legislation and administrative procedures so as to permit the application in all countries, of uniform standards of internal arms control, regulating the export and import of arms, is essential to the prevention of the illicit arms trade.

IV. UNITED NATIONS BACKGROUND

A. Resolution 43/75 I

7. In resolution 43/75 I of 1988, entitled "International arms transfers", the General Assembly expressed its conviction that arms transfers in all their aspects deserved serious consideration by the international community, inter alia, because of increasing illicit and covert arms trafficking.

8. The resolution requested Member States to consider reinforcing their national systems of control and vigilance concerning production and transport of arms.

B. Report of the Secretary-General 1/

9. Section VIII of the Secretary-General's report on ways and means of promoting transparency in international transfers of conventional arms, prepared at the request of the General Assembly in resolution 43/75 I, represents an initial review of some aspects of the illicit arms trade, and, among other recommendations, urges States to give high priority to eradicating that trade and to take the following actions towards that end:

(a) Ensure that they have an adequate body of national laws and/or regulations and administrative procedures to ensure effective control of their armaments and of exports and imports of arms with a view to preventing them from getting into the hands of parties engaged in illicit arms trade;

(b) Endeavour to ensure effective control of borders with a view to preventing illicit arms trade;

(c) Maintain an effective system of export and import licences, and delivery and end-use/end-user certificates or equivalent mechanisms;

(d) Provide for adequate numbers of customs officials appropriately trained to enforce the necessary controls over the export and import of arms;

(e) Cooperate with other States at the bilateral and multilateral levels to provide customs information on trafficking in and detection of illicit arms, and coordinate intelligence efforts as and when possible and necessary;

(f) Intensify their efforts against corruption and bribery.

C. Resolution 46/36 H

10. Resolution 46/36 H, which was adopted unanimously by the General Assembly at its forty-sixth session, welcomed the recommendations in the report of the Secretary-General and once of again called upon States to give high priority to eradicating the illicit trade in weapons and military equipment, and to take action as recommended in the report.

11. The resolution stressed the need for cooperation between States on the international, regional and subregional levels to harmonize laws and relevant administrative procedures, as well as measures to enforce them. To that end, it requested States to provide the Secretary-General with relevant information on their national legislation and/or regulations on arms exports, imports and procurement, and administrative procedures, as regards both authorization of arms transfers and prevention of the illicit arms trade.

12. The resolution also called upon States to provide the Secretary-General, in accordance with national judicial procedures, with information regarding arms and military equipment, seized by authorities, destined for the use of terrorists, drug traffickers and organized crime and for mercenary and other destabilizing activities. This information should shed light on the phenomenon of the illicit arms trade and provide a broader analytical base for its study.

13. Under paragraph 8 of the resolution, the United Nations was given the responsibility for assisting in the holding of meetings and seminars at the national, regional and international levels, for promoting efforts to eradicate the illicit traffic in arms, and for providing advisory assistance to Member States, when so requested, on the recommended measures for enforcement of relevant rules and administrative procedures, including the training of customs and other officials, so that States could coordinate their efforts and thereby benefit on a continuing basis from the knowledge and experience of other States.

D. Report of the Secretary-General entitled "New dimensions of arms regulation and disarmament in the post-cold-war era" 2/

14. In this report, the Secretary-General recommends that States should take a closer look at international private "arms dealers" and states that in the present situation it is both possible and necessary to impose stricter regulations on such activities.

V. CONTROLS AT THE WORLD LEVEL

15. No country can, by itself, eradicate the problem of the illicit arms trade or effectively control its own armaments without regard for the impact of the growing supply of arms on the black market and the internal and external factors which determine demand. The cooperation of the international community, represented by the United Nations, is therefore necessary if solutions are to be found. A strategy must accordingly be developed jointly by the diplomatic, military and police authorities of all States to neutralize the factors which promote the illicit arms trade.

16. Prevention is an essential factor in the strategy for the eradication of the illicit arms trade. Specific measures designed to achieve that end must therefore be devised and implemented. From this standpoint two priority lines of action must be promoted: (a) national measures to ensure effective control of the transfer, possession and carrying of arms, and (b) measures of cooperation and coordination at the bilateral and multilateral levels which would help to reduce the opportunities for illegal arms transfers.

17. These measures would include the harmonization of legislation, including the elaboration of joint control machinery; the coordination of activities relating to the seizure of illicit arms; the exchange of information; methods, means and levels of communication; joint operations in border areas, including the installation in such areas of customs units specially trained for the purpose; the training and instruction of specialized personnel; the establishment in each country of modern systems for the registration of arms which have been seized and of offences and offenders; and programmes to strengthen the ties of brotherhood and solidarity between the police forces of neighbouring countries.

18. Where peacemaking processes have been completed or arms reduction agreements have been concluded, there is a large surplus of arms available. In

such circumstances, the States involved must exercise greater control over the arms to prevent them being placed on the black market.

19. The large number of arms manufacturers and dealers at the world level and the diversity of their products detract from the effectiveness of the unilateral control measures applied by many States. Those countries in which there are the largest number of arms manufacturers and dealers must take extreme measures to ensure effective control over them in order to ensure the effectiveness of measures for the prevention of the illicit arms trade.

20. At the world level, a computerized system should be established to record those arms which have disappeared or been stolen so that if any attempt is made to register or sell them the system would immediately identify them and the persons involved could be tracked down and penalized and a more serious criminal act could perhaps be prevented.

21. The levels of communication with regard to the illicit arms trade should be expanded to include exchanges of information which would permit institutions engaged in the control, tracking and seizure of arms in all countries to make a full-scale effort to:

(a) Coordinate action regarding the seizure of arms, explosives and munitions; the machinery for the prevention of drug trafficking could also be used for this purpose;

(b) Optimize the results and minimize the efforts of States to achieve effective arms control and profit from the successful experience of some States in this field and apply it to international control measures;

(c) Track down offending organizations engaged in the arms trade and identify the person responsible and the end-user of a weapon or explosive with which criminal acts have been committed;

(d) Identify the original manufacturer and trace the history of arms seized by the authorities and verify the physical elements of the arms (serial number, make and calibre);

(e) Increase knowledge of the arms, munitions and explosives used in the illicit arms trade and the criminal ways in which they have been used.

VI. INTERNAL CONTROL

22. States generally permit individuals to acquire arms for self-defence, within the limits of certain legal and technical restrictions. The State must then provide mechanisms to ensure that those arms will be used in an appropriate manner, without detriment to social harmony and national, regional or international security.

23. The basic objective of internal arms control legislation is to contribute to the security of the citizens of the country, protecting them from the

violence and crime which follows in the wake of the illegal possession and carrying of arms or the criminal use of arms acquired legally.

24. Internal arms control legislation should constitute an effective and practical tool to curb the illegal possession and carrying of arms, arms smuggling and the use of arms in criminal activities.

25. The State should exercise absolute control over the manufacture of arms, the arms trade, and the possession and use of arms, in order to prevent illicit trafficking. The legal context should therefore consider restrictions and controls on arms which individuals are permitted to hold, as well as controls on arms for the private use of the military and police forces.

26. The State should define which arms are permitted by law for civilian use and which may be used or possessed by the military and police forces, on the basis of the calibre of the arms, their system of operation and, mainly, their end-use.

27. The arms permitted for civilian use, whether imported or of domestic manufacture, should be subject to controls at all points in the chain, from production and/or acquisition up to the time they are sold to an individual. From then on they should remain subject to monitoring and control by an administrative entity authorized to carry out those functions and to prevent the arms being used in criminal activities or being exported illegally to other nations.

28. (a) Internal control problems. In general, the problems of an internal nature relating to arms control may be summed up as follows:

(i) Black market: illicit entry or exit of arms - smuggling by air, sea or land;

(ii) Illicit internal arms trafficking: sale of arms to persons not authorized to possess or carry arms;

(iii) Home-made weapons: circulation of home-produced weapons;

(iv) Misplacement, loss and theft of arms held by civilians or the police;

(v) Lack of adequate national and international means of control on the part of the authorities.

(b) State control of arms in the hands of civilians suggests the need to adopt the following measures:

(i) Ensuring the control and monitoring of arms allowed to civilians by means of a computerized national register listing all persons holding a permit to own or carry arms, as well as all relevant information on the individual, the arm permitted and the use the individual intends to make of it;

(ii) Making a distinction between authorization to own and to carry arms. Each should be governed by a regime of specific restrictions and control;

(iii) Periodic renewal of permits to carry or own arms, for the purpose of verifying the physical and mental capacity of the user to handle the arm;

(iv) Promotion of awareness among the population that the arms they own for their personal defence are a means of security, and not of increasing the level of violence.

(c) Control of arms for the personal use of the armed forces: The State must hold a monopoly of and exercise absolute control over arms for the personal use of the military forces and the police - over their production, purchase, export and import. Their possession and use must be solely in exercise of the legitimate right of every State to defend the nation, and in fulfilment of the obligation to respect the international rules of peaceful coexistence.

(d) Control of arms transfers:

(i) The rule which should govern transfers of arms and military equipment is that they should not give rise to social disturbances in any State, nor should they cause, lead to the escalation of or prolong conflicts between States;

(ii) Arms should be exported or imported only after careful evaluation of the political situation both within and outside the area in question. The evaluation should cover the impact of the transfer of any type of arms, including small-calibre arms, on the political, social and economic situation of the countries concerned. Economic profit cannot be a valid reason for selling or purchasing arms;

(iii) Likewise, account should be taken of transfers of military equipment, components and parts for the production and assembly of arms, as well as of technology, services and equipment modified for military use;

(iv) States should exercise the necessary administrative controls to prevent the export of arms and military equipment whose end-use or end-user does not have the explicit and verified authorization of the governmental authorities of the recipient country. Likewise, the receiving State must ensure that imported arms are covered by a certified licence of the authorities in the providing State. In both cases, the involvement of agents or intermediaries over whom the authorities cannot exercise absolute control should be avoided;

(v) The receiving State involved in an arms transfer must undertake not to re-export them or allow them to enter the black market.

VII. CONTROL OF EXPLOSIVES

29. States must exercise effective control over the trade in and transport, security and use of explosives - increasingly used for the commission of crimes by terrorists - in order to:

(a) Optimize or adjust the legislation on dual-purpose explosives to avoid their improper use in criminal activities and their illicit transfer;

(b) Eliminate intermediaries in the explosives trade so that factories sell to users only through the body authorized by the State;

(c) Authorize the purchase of explosives at intervals in accordance with the real needs of each user, thus preventing surplus stocks of explosives and associated items which will attract the interest of criminals;

(d) Establish a sales register requiring manufacturers of and traders in explosives and associated items to describe their use, in such a way that the user can convincingly demonstrate the consumption of explosives and the balance remaining to authorized national inspectors;

(e) Control the transport of explosives and associated items under proper police protection in order to avoid them being stolen in transit.

VIII. COORDINATION OF INTELLIGENCE

30. States must consider and apply at the national level the recommendations that emanated from the International Symposium on Firearms and Explosives held at Lyons, France, in September 1992 under the auspices of Interpol. These recommendations, elaborated on by a regional meeting for Latin America on the traffic in cocaine and firearms, could well provide the foundations for coordination of intelligence in this field on a world-wide scale:

(a) It is recommended that member countries should control sales by authorized manufacturers and distributers of arms, munitions and explosives, so that the destination of these items can be more easily verified;

(b) (i) It is recommended that each country in which firearms are manufactured should establish a national tracing office so as to enable the police to trace arms from the point of manufacture up until their authorized sale. The necessary arrangements should also be made so that when a company manufacturing firearms ceases to operate for any reason, it sends its records to the tracing offices;

(ii) Member countries are encouraged to request the assistance of Interpol in determining the country of manufacture and tracing the history of firearms seized by the authorities. Interpol's General Crime Group stores the information on firearms manufacturers contained in the Interpol Arms Trafficking in Arms system (ITAR);

(c) It is recommended that Interpol member countries should make due use of ITAR. This would provide the best means of collaboration through Interpol in combating international terrorism, organized crime and other forms of violent crime involving the use of firearms and explosives;

(d) Member countries are urged to designate a body responsible for scrupulously communicating to Interpol all weapons- and explosives-related incidents for distribution to all member countries. This reporting should be accomplished using the Interpol Weapons and Explosives Incident form;

(e) With reference to explosives incidents, Interpol recommends to member countries that they designate an official to liaise with Interpol by receiving and sending on request, for retransmission to the other member countries using Interpol dissemination mechanisms for the purpose, relevant information regarding all known cases of the concealment of explosives or their illegal transport, as well as on cases of seizure of any improvised explosive device, in respect of which Interpol should be provided with detailed information on the shape, method of concealment, and ignition system, and a diagram of the device, and if the latter has been detonated, whatever information is obtained from the investigation of the bombing should be transmitted to it.

Notes

1/ A/46/301.

2/ A/C.1/47/7.